

**ORIGINAL**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

X

Phil Brodsky

SEARCHED  
INDEXED  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 2/15/08  
No. 07 CV 10286

Plaintiff

-against-

Armstrong World Industries, Inc.,  
Armstrong Cork Company, Inc.

Defendants,

X

DEFENDANTS' MOTION TO COMPEL

Defendants, Armstrong World Industries, Inc. and Armstrong Cork Company, Inc. (hereinafter "Defendants") by and through its attorneys, Wilbraham, Lawler & Buba, hereby respectfully move for an order compelling Plaintiff to provide Rule 26 Disclosures and to comply with the Court Order of November 27, 2007:

1. This matter was transferred to the United States District Court, Southern District of New York on or about November 13, 2007.

2. On December 17, 2007, Robert Lawler, counsel for defendant spoke with Norman Colon, counsel for plaintiff. Mr. Colon indicated that he would serve discovery materials to defense counsel (See Correspondence, dated January 8, 2008, attached hereto as Exhibit "A").

3. Counsel for Plaintiff has never served discovery materials as required by F.R.C.P. 26 (See Exhibit "A").

4. On January 8, 2008, Counsel for Plaintiff forwarded to Defendant an Order signed by the Honorable Louis L. Stanton, U.S.D.J. scheduling a conference on February 15, 2008. This Order also required all parties to jointly prepare a proposed

*Rejected for noncompliance with Local Rules*

*37.2*

*So Ordered.*

*Louis L. Stanton  
2/15/08*

scheduling order (See Correspondence, dated January 8, 2008, attached hereto as Exhibit "B").

5. By correspondence dated January 8, 2008, Defendant requested that Plaintiff contact them to schedule a conference to prepare the joint proposed scheduling order (See Exhibit "A").

6. Defendant again requested that Plaintiff contact counsel to schedule the conference to prepare the joint proposed scheduling order and to provide the Rule 26 disclosures (See Correspondence, dated January 28, 2008, attached hereto as Exhibit "C").

7. Defendant renewed this request via correspondence dated February 5, 2008 (See Correspondence dated February 5, 2008, attached hereto as Exhibit "D").

8. To date, Plaintiff has not responded to any of these requests and has not contacted Defense Counsel to arrange a conference to prepare a joint proposed scheduling order as required by the Court's Order of November 27, 2007.

**WHEREFORE**, Defendants, Armstrong World Industries, Inc. and Armstrong Cork Company, Inc., respectfully request that the Court enter an order compelling Plaintiff to serve disclosures pursuant to F.R.C.P. 26 and to contact defense counsel to prepare the joint proposed scheduling order.

Wilbraham Lawler & Buba

By: John S. Howarth  
John S. Howarth, Esquire

**CERTIFICATION OF SERVICE**

I, John S. Howarth, counsel for the defendants Armstrong World Industries, Inc. and Armstrong Cork Company, Inc. do hereby certify that a true and correct copy of the defendants' Motion to Compel was duly filed electronically with the court by use of the PACER System of the United States District Court for the Southern District of New York and that a true and correct copy of the same was also served upon counsel for the plaintiff by first class mail, postage pre-paid at the address below:

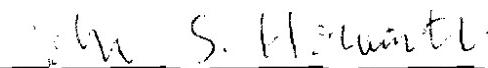
Norman R. Colon, Esquire  
209-45 26<sup>th</sup> Street-Suite 1B  
Bay Terrace, NY 11360

John S. Howarth  
John S. Howarth

Dated: February 7, 2008

**VERIFICATION**

John S. Howarth, Esquire, states that he is the attorney for Defendants in the above matter; that he is acquainted with the facts set forth in the foregoing Motion to Compel and that the same are true and correct to the best of his knowledge, belief and information; and that this statement is made subject to penalties relating to unsworn falsification to authorities.

  
John S. Howarth, Esquire  
Attorneys for Defendants

Date: February 7, 2008

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

**Phil Brodsky**

**No. 07 CV 10286**

**Plaintiff**

**-against-**

**Armstrong World Industries, Inc.,  
Armstrong Cork Company, Inc.**

**Defendants,**

-----X

**ORDER**

AND NOW, on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, upon consideration of Defendants' motion to compel and responses thereto, if any, it is hereby ordered, adjudged and decreed that defendant's motion is granted. Plaintiff is compelled to produce Rule 26 Disclosures with ten (10) days of the date of this order and is further ordered to contact Defense Counsel with five (5) days of the date of this order.

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J.